

AMENDED IN SENATE MAY 13, 2004  
AMENDED IN SENATE APRIL 12, 2004  
AMENDED IN SENATE MARCH 23, 2004

**SENATE BILL**

**No. 1676**

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**Introduced by Senator Romero**

February 20, 2004

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An act to amend Section 6129 of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 1676, as amended, Romero. Crime.

Existing law requires the Inspector General, the Youth and Adult Correctional Agency, the Department of the Youth Authority, the Department of Corrections, the Board of Corrections, the Youthful Offender Parole Board, and the Board of Prison Terms to refer matters involving criminal conduct in the context of employee retaliation to the proper law enforcement authorities for further action and also to notify the Attorney General of the action. Existing law provides that if the local district attorney refuses to accept the case, the matter shall be referred to the Attorney General.

This bill would require the Attorney General to make an independent evaluation of the evidence of criminal conduct and to make a de novo determination whether to accept the case based upon whether there is sufficient evidence to sustain a conviction.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 6129 of the Penal Code is amended to read:

6129. (a) (1) For purposes of this section, “employee” means any person employed by the Youth and Adult Correctional Agency, the Department of Corrections, the Department of the Youth Authority, the Board of Corrections, the Board of Prison Terms, the Youthful Offender Parole Board, or the Inspector General.

(2) For purposes of this section, “retaliation” means intentionally engaging in acts of reprisal, retaliation, threats, coercion, or similar acts against another employee who has done either of the following:

(A) Has disclosed or is disclosing to any employee at a supervisory or managerial level, what the employee, in good faith, believes to be improper governmental activities.

(B) Has cooperated or is cooperating with any investigation of improper governmental activities.

(b) (1) Upon receiving a complaint of retaliation from an employee, the Inspector General may commence an investigation. All investigations conducted pursuant to this section shall be performed, where applicable, in accordance with the requirements of Chapter 9.7 (commencing with Section 3300) of Title 1 of Division 4 of the Government Code.

(2) When investigating a complaint, in determining whether retaliation has occurred, the Inspector General shall consider, among other things, whether any of the following either actually occurred or were threatened:

(A) Unwarranted or unjustified staff changes.

(B) Unwarranted or unjustified letters of reprimand or other disciplinary actions, or unsatisfactory evaluations.

(C) Unwarranted or unjustified formal or informal investigations.

(D) Engaging in acts, or encouraging or permitting other employees to engage in acts, that are unprofessional, or foster a hostile work environment.

(E) Engaging in acts, or encouraging or permitting other employees to engage in acts, that are contrary to the rules, regulations, or policies of the workplace.

(3) Upon authorization of the complainant employee, the Inspector General may release the findings of the investigation of alleged retaliation to the State Personnel Board for appropriate action.

(c) Any employee at any rank and file, supervisory, or managerial level, who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against another employee, pursuant to paragraph (2) of subdivision (a), shall be disciplined by adverse action as provided in Section 19572 of the Government Code. If no adverse action is taken, the State Personnel Board shall invoke adverse action proceedings as provided in Section 19583.5 of the Government Code.

(d) (1) In addition to all other penalties provided by law, including Section 8547.8 of the Government Code or any other penalties that the sanctioning authority may determine to be appropriate, any state employee at any rank and file, supervisory, or managerial level found by the State Personnel Board to have intentionally engaged in acts of reprisal, retaliation, threats, or coercion shall be suspended for not less than 30 days without pay, and shall be liable in an action for damages brought against him or her by the injured party. If the State Personnel Board determines that a lesser period of suspension is warranted, the reasons for that determination must be justified in writing in the decision.

(2) Punitive damages may be awarded by the court if the acts of the offending party are proven to be malicious. If liability has been established, the injured party also shall be entitled to reasonable attorney's fees as provided by law.

(e) Nothing in this section shall prohibit the employing entity from exercising its authority to terminate, suspend, or discipline an employee who engages in conduct prohibited by this section.

(f) The Inspector General, the Youth and Adult Correctional Agency, the Department of the Youth Authority, the Department of Corrections, the Board of Corrections, the Youthful Offender Parole Board, and the Board of Prison Terms shall refer matters involving *employee* criminal conduct to the proper law enforcement authorities in the appropriate jurisdiction for further action. The entity making a referral to the local district attorney shall also notify the Attorney General of the action. If the local district attorney refuses to accept the case, he or she shall notify the referring entity who shall subsequently refer the matter to the

1 Attorney General. If the local district attorney has not acted on the  
2 matter, the referring entity shall notify the Attorney General. The  
3 Attorney General shall make an independent evaluation of the  
4 evidence of criminal conduct being referred and shall make a de  
5 novo determination whether to accept the case based upon whether  
6 there is sufficient evidence to sustain a conviction *in cases*  
7 *involving death, or serious bodily injury, as that term is defined in*  
8 *Section 243, cases involving the use of excessive force in violation*  
9 *of Section 149, cases of retaliation as defined in this section, cases*  
10 *of perjury as defined in Section 118, or cases of filing a false report*  
11 *in violation of Section 118.1.* It is the intent of the Legislature that  
12 the Department of Justice avoid any conflict of interest in  
13 representing the State of California in any civil litigation that may  
14 arise in a case in which an investigation has been or is currently  
15 being conducted by the Bureau of Investigation by contracting  
16 when necessary for private counsel.

17 (g) Upon the completion of any investigation of retaliation, the  
18 Inspector General shall prepare a written report, which shall be  
19 held as confidential and disclosed in confidence, only to the  
20 Secretary of the Youth and Adult Correctional Agency, the  
21 Governor, and the appropriate director or law enforcement agency.  
22 A summary of the report's findings and conclusions shall be made  
23 available, upon request, to the person who requested the  
24 investigation, the person or persons who were the subjects of the  
25 investigation, and to any Member of the Legislature.

26 (h) Nothing in this section shall preclude the office of the  
27 Inspector General from following all applicable laws regarding  
28 confidentiality, including, but not limited to, the California Public  
29 Records Act, the Public Safety Officers Procedural Bill of Rights,  
30 the Information Practices Act of 1977, the Confidentiality of  
31 Medical Information Act, and the provisions of Section 832.7  
32 relating to the disposition notification for complaints against peace  
33 officers.

